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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Black & Decker Corporation**

Serial No. 75/215,991

Bruce S. Shapiro of **The Black & Decker Corporation** for **Black & Decker Corporation**.

Robert Clark, Trademark Examining Attorney, Law Office 108
(David E. Shallant, Managing Attorney).

Before Seeherman, Hohein and Rogers, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Black & Decker Corporation has filed an application to register the mark "VERSAPAK" for "flashlights and [a] combination flashlight with recharger for consumer use."¹

¹ Ser. No. 75/215,991, filed on December 19, 1995, which alleges a bona fide intention to use the mark in commerce. Applicant claims ownership of Reg. No. 1,998,552, issued on September 3, 1996, for the mark "VERSAPAK" for "batteries, battery packs, [and] battery chargers for use with tools and appliances."

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark "VERSA-LITE," which is registered for "portable electric high-intensity spotlights, searchlights, and flashlights for use by electric utility, gas and telephone personnel and by policemen and firemen,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Preliminarily, we note that in any likelihood of confusion analysis, two key considerations are the similarity or dissimilarity of the goods and the similarity or dissimilarity of the marks. See, e.g., *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).³ Here, it is obvious that registrant's flashlights for utility and public safety use are the goods which are the closest, for purposes of determining whether there is a likelihood of confusion as to source or sponsorship, to applicant's flashlights for consumer

² Reg. No. 1,717,869, issued on September 22, 1992, which sets forth dates of first use of March 10, 1974; combined affidavit §§8 and 15.

³ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."

use, and the Examining Attorney has consequently focused his arguments on such goods. In this regard, the Examining Attorney asserts that "[r]egistrant's flashlights and applicant's flashlights could very well be used to do the same thing" and, thus, that "the essence of the goods is not limited to a particular use." Specifically, the Examining Attorney insists that, "[d]espite applicant's contention that the applicant's and the registrant's identifications [of goods] are highly limited and specific, ... the identification used by registrant is very broad and could encompass the flashlights identified by applicant." This is because, according to the Examining Attorney, the utility personnel and public safety workers who constitute the users of registrant's goods "encompass a huge number of consumers" and "[n]othing in the record indicates that flashlights used by these consumers are any different from flashlights intended for 'consumer use'."

We agree with applicant, however, that as identified in the application and cited registration, there are significant differences in the respective goods, in the channels of trade for such goods and in the actual purchasers thereof so as preclude a likelihood of confusion as to the origin or affiliation of the goods. As applicant notes, an "everyday flashlight is intended for purchase by the ordinary consumer who does not have access to or the ability to purchase ...

flashlights intended for use by police and fire units and utility personnel." Plainly, the users of registrant's goods would be issued or otherwise have access to a supply of such goods, but they would rarely be the actual purchasers thereof; instead, those goods would be bought by the purchasing department of the utility company or that of the local government unit which provides public safety services such as police and fire protection. Applicant's goods, by contrast, would be purchased through retail outlets by ordinary consumers for their personal use.

Moreover, while the ranks of ordinary consumers admittedly encompass persons whose vocations include police work, fire fighting, or utility work for electric, gas or telephone companies, such fact does not mean that they would believe that lighting products of all kinds or uses necessarily emanate from a common source. As applicant persuasively argues, its goods and the generalized needs which they are designed to meet are specifically different from the specialized nature of the flashlights marketed by registrant for professional use.

In particular, we concur with applicant that such differences are indeed reflected in the identifications of the goods at issue and that, as a consequence thereof, the channels of trade or distribution for the products are completely different. According to applicant:

Specifically, Applicant's goods are typical flashlights found in the everyday consumer outlet such as K-Mart or WalMart or Home Depot or Sears. One distinguishing, and highly marketable, feature of Applicant's flashlight is the fact that it carries a rechargeable battery pack which is interchangeable with other household products and power tools manufactured and distributed by Applicant also under the VERSAPAK mark.

Registrant's goods, on the other hand, are ... flashlights for use by utility personnel, police and firemen. By the very definition of the goods, ... Registrant has imposed a certain quality on the nature of the goods it markets which distinguishes them from the goods marketed by Applicant. Registrant's goods must meet the professional needs of its customers.

....

With [specific] regard to Registrant's flashlights, the type, power, strength, weight, size, required by professional societies such as police and fire units of Registrant's flashlights are different from the type, power, strength, weight, size, etc., needed by the everyday purchaser of an everyday consumer flashlight. The flashlights listed in Registrant's registration are special issue goods which most likely must meet certain standards and guidelines posted by the professional organizations [which purchase such products].

Thus the goods at issue are different by their very nature.

In addition, we find that confusion is not likely because the respective marks, "VERSAPAK" and "VERSA-LITE," when considered in their entireties, have different suggestive

connotations and therefore project different overall commercial impressions. Specifically, we agree with applicant that, while each of the marks includes the term "VERSA," the "similarity ends there." Although the Examining Attorney contends, correctly in our view, that the term "PAK" is the phonetic equivalent of the word "pack," we disagree with his contention that the term "PAK" is descriptive of applicant's goods since applicant's goods include a pack of flashlights or a pack containing a flashlight and recharger." Nevertheless, as applicant's remarks make clear, such term merely describes the "rechargeable battery pack" feature which powers its flashlights and is made for use with its rechargers. Moreover, as to the term "LITE" in registrant's mark, such term is plainly the phonetic equivalent of the word "light," which as the Examining Attorney points out "is obviously descriptive of registrant's portable lights."

The Examining Attorney concludes, however, that in view of the descriptiveness of the "PAK" and "LITE" portions of the respective marks, the term "VERSA" is the dominant element of each of the marks. In particular, the Examining Attorney insists that:

VERSA is a strong mark as applied to registrant's goods. There is no evidence of record that VERSA has any meaning in any language and is, therefore, arbitrary as

applied to spotlights, searchlights and flashlights.

We concur with applicant, however, that "[c]onceptually, the marks are different particularly when considered in relation to the goods."

In this regard, it seems readily apparent to us that, rather than being an arbitrary and hence strong element of the respective marks, the term "VERSA" is suggestive of the versatility of different features of applicant's and registrant's goods. Applicant's "VERSAPAK" mark suggests that the battery pack for its flashlights and combination flashlight and recharger for consumer use is versatile in the sense that it is "is interchangeable with other household products and power tools manufactured and distributed by Applicant" The "VERSA" portion of registrant's "VERSA-LITE" mark, on the other hand, is suggestive of the versatility provided by the inherent nature of registrant's goods, which unlike ordinary flashlights for general consumer use, must meet the on-the-job demands of a wide variety of professional applications or uses on a constant basis (with the same, likewise, being true of registrant's portable high-intensity spotlights and searchlights). The marks "VERSAPAK" and "VERSA-LITE," therefore, have different, suggestive connotations, when used with the goods associated therewith, and overall engender sufficiently different

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commercial impressions so as to preclude a likelihood of confusion.

Decision: The refusal under Section 2(d) is reversed.

E. J. Seeherman

G. D. Hohein

G. F. Rogers
Administrative Trademark
Trademark Trial and Appeal

Judges,
Board